ANNUAL REPORTS

OF THE

Mineral Land Commissioner

FOR THE

STATE OF MONTANA

For the Year Ending November 30, 1893-4

HELENA, MONTANA
STATE PUBLISHING COMPANY
PRINTERS, BINDERS
1894

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OFFICE OF MINERAL LAND COMMISSIONER,
BUTTE, Montana, November 30, 1893.

TO HIS EXCELLENCY JOHN E. RICKARDS,
Governor of Montana.

SIR:—

In compliance with the requirements of the law, I have the honor to hand you a report of the Mineral Land Commissioner of the State of Montana, for the year ending November 30, 1893.

Respectfully submitted,

GEO. W. IRVIN, Commissioner.

ANNUAL REPORT

OF THE

Mineral Land Commissioner

BUTTE, MONTANA, November 30th, 1893.

To HIS EXCELLENCY JOHN E. RICKARDS,
Governor of Montana.

SIR—At this time it is proper to lay before you the exact status of the controversy between the United States and the State of Montana on the one side and the Northern Pacific Railway Company on the other, over the mineral lands lying within the boundaries of the territory granted by the United States to the Northern Pacific Railway Company in aid of its construction.

As is well known, Congress, in 1864, granted to the Northern Pacific Railroad Company a charter to construct a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast. It was given a right of way and the right to use material for construction from the public lands, and in addition thereto a grant of every alternate odd numbered section of land for forty miles on each side of its line, and an additional grant of lieu lands of ten miles on each side of its track. It is not so well known, however, that in 1870 an Act was passed by Congress entitled "A Resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and for other purposes," which, among other things, granted a further indemnity

of ten miles on each side of the track, adjoining the first indemnity limits, the whole making a tract of country through Montana affected thereby 120 miles wide and approximately 780 miles long, the last being the distance that the Northern Pacific traverses the State of Montana.

The Act of Congress giving to the Railroad Company these lands expressly excluded all mineral lands from the grant, the term "mineral" not to include iron or coal. The Northern Pacific Company has found a convenient plan to claim these mineral lands, and a Circuit Court, which seems to the lay mind to have been profound in technicality and lacking in common sense, has evolved some decisions in its favor.

Four years ago the Northern Pacific Company began, through its agents and attorneys, an aggressive campaign to capture all of the mineral lands on the said alternate sections, claiming that every piece or parcel of land so situated not *known* to be mineral at the time of the first definite location of its route through Montana in 1872, or its last definite location in 1882 (the Railroad Company does not seem to know which), belonged to it.

When this condition of affairs became known to the people of Montana it created a profound sensation throughout the State, and our citizens commenced to organize for their own protection. It was believed that if the Northern Pacific Company, through technical construction of the law or otherwise, was permitted to obtain possession of lands not granted to them, it would acquire what might ultimately be worth many times the value of what was intended to be its original endowment, its franchises, and its completed and equipped lines. To prevent, if possible, this flagrant injustice a State Mineral Land Association was organized, which went vigorously to work and by its able and energetic efforts was enabled to temporarily nullify the acts of the Railroad Company, being upheld in Washington by the Honorables, the Secretary of the Interior and the Commissioner of Public Lands. The officers of the Association being men of affairs and having their own private interests to look after, the Legislative Assembly of Montana, at its second regular session, provided for a temporary State Bureau to have the matter in charge, with Honorable Martin Maginnis as Commissioner thereof. His incumbency was from March 4th, 1891, to March

4th, 1893. Prior to his assuming the duties of his office a case had been tried involving the legal aspect of the claim of the Railroad Company to these lands, in a contest involving a quartz lode mining claim near the City of Helena, wherein the Railroad Company was plaintiff and Richard P. Barden et al. were defendants. This was decided adversely to the defendants by Sawyer, Circuit Judge; Knowles, District Judge, dissenting.

During his term of office, at the expense of the State, the Commissioner had an appeal of this case to the Supreme Court of the United States perfected. It came on for hearing at Washington, D. C., in February last. Eminent counsel were employed on behalf of this State, and the Northern Pacific Company was ably represented. The argument lasted several days, and the case was submitted. After deliberation the Supreme Court, apparently deeming the case of great importance, announced that it declined to decide it, owing to the absence at the trial of one of the Associate Justices, and ordered that it be reheard on October 16th, of this year, before a *full bench*.

Effort was also made to obtain favorable Congresssional action. A bill had been introduced in the 51st Congress by Honorable Thomas H. Carter, looking to the proper determination of the matter; but being a subject upon which Congress was so poorly informed the bill failed to become a law. In the 51st Congress Senator Sanders also tried to obtain action in this behalf, introducing a bill therefor in the Senate. Finally, the Secretary of the Interior, the Commissioner of Public Lands and the Senators and Congressmen of Idaho and Montana, consulting with our Commissioner, pretty generally agreed upon a bill, which was introduced by Honorable W. W. Dixon in the United States House of Representatives on March 2nd, 1892. The bill provided for the examination and classification of all lands within the Northern Pacific land grant in Montana and Idaho, with special reference to the mineral or non-mineral character of such lands, and to reject, cancel and disallow any and all claims for filing theretofore made or which might thereafter be made by or for the Northern Pacific Company on any lands in said States which, upon examination, should be classified as mineral lands. It also provided for the appointment of Commissioners to make the classification, and provided that no patent should issue to the

Northern Pacific Company for any land in Montana or Idaho until the examination and classification should have been made in accordance with the provisions of the bill. It seemed impossible, in the time available, to get a hearing for this measure and it also failed to become a law.

On the eighth day of March of this year I qualified as State Mineral Land Commissioner, and took up the work as I found it. I proceeded to Washington immediately, and at once obtained interviews with the Honorables the Secretary of the Interior, the Attorney-General and the Commissioner of the General Land Office. The Secretary of the Interior readily promised that no patents should issue to the Northern Pacific Company upon any of their selections in Montana, pending the action of Congress in the premises and the judicial determination of the questions involved. At the office of the Commissioner of Public Lands I have had maps made, showing, with some detail, the magnitude of the Northern Pacific grant, in this way better illustrating to the government the contention of the people of the State.

The Attorney-General, at my request, made an examination of the questions involved in the cause of the Northern Pacific Company vs. Richard P. Barden et al., and after due deliberation expressed himself as believing the interests of the government very considerably involved. After several conversations relative to the matter, he referred the whole subject to the Honorable Lawrence A. Maxwell, Solicitor-General of the United States. This gentleman has been carefully studying the briefs heretofore filed in the Barden case and examining the law with reference thereto, and I think he is now well equipped to take the lead in the conduct of the government's part of the case.

Honorable W. W. Dixon has been employed to represent the State of Montana. He is familiar with every Act of Congress relative to the Northern Pacific land grant, as well as every mining enactment of that body. He understands their judicial applications to the questions involved, and his age, experience and great learning enable him to comprehend with perspicuous exactness their construction in spirit and in law. Hon. Chas. S. Hartman, our present Member of Congress, has volunteered his services as counsel for Barden et al., and has been entered of record as such.

With these preparations, on the 16th day of last October we were present and ready for a hearing in the Supreme Court. As expected, it was announced that this cause could not be then heard because of a vacancy in the bench, and that it would remain in its present status until a full bench was secured. By reason of the death of Associate Justice Blatchford there is a vacancy in that Court, and has been for some time. Upon the convening of the recent extra session of Congress the President nominated to the Senate for the position the Honorable Wm. H. Hornblower, of New York, whose confirmation lagged through the entire eighty days and then failed of action. The President will probably immediately send the same or another name to the Senate, and a prompt confirmation is likely. The Solicitor-General will have the cause heard as soon thereafter as possible, giving time for all parties interested to be present.

In the Senate, Senator T. C. Power, and in the House, Congressman C. S. Hartman, have introduced Bills for the classification and segregation of the mineral lands within the Northern Pacific land grant, practically the same in substance as the Bill introduced in the 52nd Congress by Hon. W. W. Dixon. These Bills have been referred to the Interior Department for examination and recommendation. The Commissioner of Public Lands suggested to the Committee on Public Lands of the respective Houses of Congress but one amendment, and that was approved by the Secretary. It simply provides that the law be made applicable to all land grants to railroads. In this the delegations from Montana and Idaho concur. Mr. Hartman will offer another amendment providing that the parties may institute proceedings and contest each other's rights before the local land officers, in the manner now provided by law in mining and agricultural cases.

The Chairman of the House Committee on Public Lands (McRae) has assured us that he will be at our service in pushing forward this or any other enactment we may desire in reference to this matter.

If the Supreme Court decide the Barden case in favor of the people we shall want the legislation now asked for with as little alteration as possible; but if, on the contrary, the decision is against us, it will be necessary to modify our demands and pos-

sibly make the best terms practicable with the railroad company and the government. Therefore, it has been thought best not to push our present Bills in Congress until we ascertain the result of the decision of the Supreme Court.

While so much that is important to the material interests of the people of the State of Montana is dependent upon the view taken by the Supreme Court, it is impossible to feel very cheerful as to the future of the great question involved.

Very Respectfully, GEO. W. IRVIN,
State Mineral Land Commissioner.

Opinion of the Supreme Court of the United States in the Case of

Richard P. Barden, et al.
vs.
The Northern Pacific Railroad Company.

WASHINGTON, June 1, 1894.—Following is the full text of the decision of the supreme court in the case of Barden et al. vs. the Northern Pacific Railroad company:

SUPREME COURT OF THE UNITED STATES No. 612.—OCTOBER TERM, 1893.

Richard P. Barden, William Muth, James R. Boyce and Ada F. Boyce, plaintiffs in error, vs. the Northern Pacific Railroad Company.
In error to the circuit court of the United States for the District of Montana.

STATEMENT OF THE CASE.

This was an action for the possession of certain parcels of land containing veins or lodes of rock in place bearing gold, silver and other precious metals, situated within section 27, of township 10 north, range 4 west of the principal meridian of Montana, claimed by the Northern Pacific Railroad company—the plaintiff below, the defendant in error here—as parts of the land granted to it by the act of Congress of July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," and the acts and resolutions supplementary and amendatory thereof. (13 Stat, c. 217, p. 365.)

By its first section the plaintiff was incorporated and authorized to construct and maintain a continuous railroad and telegraph line, with the appurtenances, from a point on Lake Superior, in the state of Minnesota or Wisconsin, and thence westerly by the most eligible route as should be determined by the company, within the territory of the United States, on a line north of the 55th degree of latitude, to some point on Puget Sound, with a branch by the valley of the Columbia river to a point at or near Portland, in the state of Oregon. The company was invested with all the powers, privileges and immunities necessary to carry into effect the purposes of the act.

By the third section a grant of land, other than mineral, was made to the company in words of present conveyance to aid in the construction of the railroad and telegraph line and for other purposes. Its language is: "That there be, and hereby is, granted to

the Northern Pacific Railroad company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and 10 alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than 10 miles beyond the limits of said alternate sections." The grant thus made is accompanied with certain conditions or provisos—these among others: "That all mineral lands be, and the same are hereby excluded from the operations of this act. and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd numbered sections, nearest to the line of said road, may be selected, as above provided; and that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal."

By the fourth section it was enacted: "That whenever said Northern Pacific Railway Company shall have 25 consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the president of the United States shall appoint three commissioners to examine the same, and if it shall appear that 25 consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the president of the United States; and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to and coterminous with said completed section of said road; and from time to time, whenever 25 additional consecutive miles shall have been constructed, completed and in readiness, as aforesaid, and certified by said commissioners to the president of the United States, then patents shall be issued to said company conveying the additional sections of lands as aforesaid; and so on as fast as every 25 miles of said road is completed as aforesaid."

By the sixth section it was enacted: "That the president of the United States shall cause the lands to be surveyed for 40 miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled, 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are hereby, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company; and the reserved alternate sections shall not be sold by the government at a price less than $2.50 per acre, when offered for sale."

The complaint alleges that the general route of the railroad extending through Montana was fixed Feb 21, 1872, and the lands in controversy were within 40 miles of such general route, and were public lands not reserved, sold, granted or otherwise appropriated, and were free from pre-emption or other claims or rights; that thereafter, July 6, 1882, the line of the road extending opposite and past the described lands was definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and that the demanded parcels were within 40 miles of the line thus definitely fixed; that thereafter the plaintiff constructed and completed that portion of its railroad and telegraph line extending over and along the line of definite location; that thereafter the president of the United States appointed three commissioners to examine the same, and they reported to him that, that portion of the railroad and telegraph line had been completed in a good, substantial and workmanlike manner, in all respects, as required by the act of July 2, 1864, and the act supplementary thereto and amendatory thereof; that the president accepted the line as thus constructed and completed; that at the time of filing the plat of definite location in the office of the Commissioner of the General Land Office, namely, July 6, 1882, the described land was not known as mineral land, and was more

valuable for grazing than for mining purposes; that in 1868 all the lands in township 10 north, of range 4 west, were duly surveyed, and the township plat was, Sept. 9, 1868, filed in the United States district land office for the district of Helena, Mont., that being the district in which said township is situated, and by that survey the land of the township was ascertained and determined to be agricultural and not mineral, and that determination and report have continually remained in force; that after the completion of the railroad the plaintiff listed the section, including the lands described, and other lands, as portions of the grant, and on Nov. 8, 1868, filed the list in the district land office at Helena, and paid the fees allowed by law; that the list was accepted and approved by the receiver and register and certified to the Commissioner of the General Land Office, and has since remained in the same district land office and in the office of the commissioner; that at the time of the acceptance, approval and allowance of the list, and at all times prior thereto, no part of the land was known mineral land, or was of greater value for mining purposes than for grazing, agricultural or townsite purposes; that during the year 1888 certain veins or lodes of rock in place bearing gold and silver and other precious metals were discovered on said described land; and thereafter William B. Wells, William Muth, Harpin Davies and Richard P. Barden, citizens of the United States, without the consent and against the will of the plaintiff, entered upon said land and made locations of said veins and lodes upon certain lots thereof, as follows, to-wit: the Vanderbilt quartz lode mining claim on lot 68, Aug. 10, 1888; the Four Jacks and the New York Central and Hudson River quartz lode mining claims on lots 72, 74 and 75, respectively, May 9, 1889; and the Chauncey M. Depew quartz lode mining claim on lot 73—all of said lots being within section 27, township 10 north, range 4 west; that the defendants are in possession of said lots, claiming under said locations, through mesne conveyances from the locators, and have been and are extracting ore therefrom, and that the same are mineral lands.

And the complaint further alleges that the United States have failed, neglected and refused to issue to the plaintiffs a patent for said land, though all acts required by law to entitle plaintiff to a patent have been fully performed; that the title to the premises has vested in the plaintiff under and by virtue of the acts of congress and its compliance therewith; that the lots designated are of the value of over $6,000, and that the value of the ore wrongfully extracted and taken from them by the defendants is over $100.

Wherefore the plaintiff prays judgment against the defendants for the recovery of the possession of the said lots, for the value of the ore so extracted and for costs.

To this complaint the defendants demurred on the ground that it did not state facts sufficient to constitute a cause of action, and entitle the plaintiff to the relief prayed. The demurrer was argued before the circuit judge and the district judge holding the circuit court of the ninth circuit, at Helena, in the state of Montana, and they differed in opinion upon the demurrer, the circuit judge holding that it was insufficient and should be overruled, and the district judge dissenting therefrom. Judgment was accordingly entered overruling the demurrer, and the defendants were allowed 10 days within which to answer the complaint. But they came into court and stated that they would abide by their demurrer, and declined to file an answer; whereupon their default was entered, and on application of the plaintiff's attorney it was ordered that judgment be entered against them for the recovery of the posaession of the lots designated, the value of the ore taken therefrom, and costs of suit, which was accordingly done. To the ruling of the court in overruling the demurrer exception was taken by the defendants; and to reverse the judgment they have brought the case to this court on writ of error.

Mr. Justice Field, after stating the case, delivered the opinion of the court.

This action is brought for the possession of certain parcels or lots of mineral land claimed by the plaintiff below—the defendant in error here—as embraced in the grant of the United States of July 2, 1864. The facts constituting the claim of the plaintiff are set forth at length in the complaint, and to their sufficiency the defendants demurred as not constituting a cause of action or entitling the plaintiff to the relief prayed. The lots are there conceded to be mineral lands, and the grant of the government applies in terms only to lands other than mineral.

To remove any doubt of the intention of the government to confine its concession to lands of that character, the grant is accompanied with a proviso declaring that all mineral lands are excluded from its operations. And as if to cut off every possible suggestion from any ingenious and strained construction that mineral lands might be reached under the legislation giving vast tracts of public lands to state and private corporations, under the pretense of aiding public improvements, a joint resolution was passed by congress in January of the following year declaring "that no act passed in the first session of the Thirty-eighth congress [that being the year 1864] granting lands to states and corpora-

tions to aid in the construction of roads, or for other purposes, or to extend the time of grants heretofore made, shall be so construed as to embrace mineral lands, which in all cases shall be and are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant." (13 Stat. 567.) This provision should be borne in mind when the statement is made as it is, that there has been no reservation of mines or minerals to the government.

No part of the contemplated road or telegraph line of the Northern Pacific Railroad company had at the passage of this joint resolution been constructed or commenced, and on the authority of the case of that company vs. Traill county (115 U. S. 600,) its provisions are to be deemed an amendment of the original act, and as operative as if originally incorporated therein.

The action being for the possession of lands conceded to be mineral, under the act of congress of July 2, 1864, it would seem that the simple reading of the granting clause and its proviso and the joint resolution mentioned would be a sufficient answer to the complaint, and a sufficient reason to sustain the demurrer without further consideration. But the plaintiff's counsel appear to find in the fact which they allege, that the lands were not known to be mineral at the time the plaintiff, by the definite location of the line of its road, was able to identify the sections granted, a sufficient ground to avoid the limitations of the grant and the prohibitions of the proviso and joint resolution.

The grant was of 20 alternate sections of land, designated by odd numbers, on each side of the road which the plaintiff was authorized to construct—a tract of 2,000 miles in length and 40 miles in width, constituting a territory of 80,000 square miles. It is true that the grant was a float, and the location of the sections in no respect affected the nature of the lands or the conditions on which their grant was made. If swamp lands, or timber lands, or mineral lands previously, they continue so afterwards.

It is also true that the grant was one in præsenti of lands to be afterwards located. From the immense territory from which the sections were to be taken it could not be known where they would fall until the line of the road was established; then the grant attached to them, subject to certain specified exceptions; that is the sections, or parts of sections, which had been previously granted, sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of, were excepted, and the title of its other sections or parts of sections attached as of the date of the grant so as to cut off intervening claimants. In that sense the grant was a present one. But it was still, as such grant, subject to the exception of mineral lands made at its date or then excluded therefrom by conditions annexed. Whatever the location of the sections, and whatever the exceptions then arising, there remained that original exception declared in the creation of the grant. The location of the sections and the exceptions from other causes in no respect affected that one, or limited its operation. There is no language in the act from which an inference to that effect can be drawn, in the face of its declaration that all mineral lands are thereby "excluded from its operations," and of the joint resolution of 1865 that "no act of the Thirty-eighth congress, (that is, of the previous session of 1864,) granting lands to states or corporations, to aid in the construction of roads or for other purposes, shall be so construed as to embrace mineral lands." The plaintiff, however, appears to labor under the persuasion that only those mineral lands were excepted from the grant which were known to be such on the identification of the granted sections by the definite location of the proposed road and the ascertainment at that time of the exceptions from them of parcels of land previously disposed of; and that the want of such knowledge operated in some way to eliminate the reservation made by congress of the mineral lands. But how the absence of such knowledge on the ascertainment of the sections granted and the parcels of land embraced therein previously disposed of, had the effect or could have the effect to eliminate the reservation of mineral lands from the act of congress, we are unable to comprehend. Such a conclusion can only arise from an impression that a grant of land cannot be made without carrying the minerals therein; and yet the reverse is the experience of every day. The granting of lands either by the government or individuals, with a reservation of certain quarries therein, as of marble, or granite, or slate, or of certain mines, as of copper, or lead, or iron found therein, is not an uncommon proceeding, and the knowledge or want of knowledge at the time by the grantee in such cases, of the property reserved in no respect affects the transfer to him of the title to it. No one will affirm that want of such knowledge on the identification of the lands granted, containing the reserved quarries or mines, would vacate the reservation, and we are unable to perceive any more reason from that cause for eliminating the reservation of minerals in the present case from the grant of the government than for eliminating for a like cause the reservation of quarries or mines in the cases supposed. And it will hardly be pretended that congress has not the power to grant portions of the public land with a reservation of any severable

products thereof, whether minerals or quarries contained therein, and whether known or unknown; yet such must be the contention of the plaintiff or its conclusion will fall to the ground. The cases cited in support of the claim of the plaintiff only show that the identification of the sections granted and of the exceptions therefrom of parcels of land previously disposed of, leaves the title of the remaining sections or parts thereof, to attach as of the date of the grant, but has absolutely no other effect. Such is the purport, and the sole purport, of the cases of the St. Paul & Pacific Railroad company vs. Northern Pacific company (139 U. S. 105,) and Deseret Salt company vs. Tarpey, (142 U. S. 241, 247,) cited by the plaintiff. In both of those cases the writer of this opinion had the honor to write the opinions of this court; and it was never asserted or pretended that they decided anything whatever respecting the mineral, but only that the title of the lands granted took effect, with certain designated exceptions, as of the date of the grant. They never decided anything else. And what was that title? It was of the lands which at the time of the grant were not reserved as minerals, and of the lands which at the time of the location had not been sold, reserved, or to which a pre-emption or homestead right had not attached. If one were to sell land in the country, reserving therefrom the minerals of gold or silver found therein, and tell the purchaser to take surveyor and measure off the land, would it be urged or pretended that the moment the surveyor ascertained the boundaries of the land sold the reservation of the minerals would be eliminated? Would any one uphold the reasoning or the doctrine which would assert such a conclusion? And can any one see the difference between the case now before us and the case supposed? Not a word was said or suggested in the cases cited about the exception or elimination of minerals; and not only in the cases cited by the plaintiff, but in a multitude of other cases, almost without number, the same silence was observed. In none of them was it ever pretended that the ascertainment of the location of the lands granted eliminated the reservations contained in the grant. The grant did not exist without the exception of minerals therefrom, and congress has declared, in positive terms, that the act shall never be construed to embrace them, and there is nothing in any of the cases cited in the plaintiff's contention which indicates in the slightest degree that the original exception of the minerals was in any respect qualified.

It seems to us as plain as language can make it that the intention of congress was to exclude from the grant actual mineral lands, whether known or unknown, and not merely such as were at the time known to be mineral. After the plaintiff had complied with all the conditions of the grant, performed every duty respecting it, and among other things that of definitely fixing the line of route, its grant was still limited to odd sections which were not mineral at the time of the grant, and also to those which were not reserved, sold, granted or otherwise appropriated, and were free from pre-emption and other claims and rights at the time the line of the road was definitely fixed, and was coupled with the condition that all mineral lands were excluded from its operation. There is, in our judgment, a fundamental mistake made by the plaintiff in consideration of the grant. Mineral lands were not conveyed, but by the grant itself and the subsequent resolution of congress cited were specifically reserved to the United States and excepted from the operations of the grant. Therefore they were not to be located at all, and if located they could not pass under the grant. Mineral lands being absolutely reserved from the inception of the grant, congress further provided that at the time of the location of the road other lands should be excepted, viz.; those previously sold, reserved or to which a homestead or pre-emption right had attached.

It is difficult to perceive the principle upon which the term known is sought to be inserted in the act of congress, either to limit the extent of its grant or the extent of its mineral, though its purpose is apparent. It is to add to the convenience of the grantee and enhance the value of its grant. But to change the meaning of the act is not in the power of the plaintiff; and to insert by construction what is expressly excluded is in terms prohibited. Besides the impossibility, according to recognized rules of construction, of incorporating in a statute a new term—one inconsistent with its express declarations—there are many reasons for holding that the omission of the word "known," as defining the extent of the mineral lands excluded, was purposely intended.

The grant to the railroad company was, as we have already mentioned, 2,000 miles in length and 40 miles in width, making an area of 80,000 square miles, a territory nearly equal in extent to that of Ohio and New York combined. This territory was known to embrace in its hills and mountains great quantities of minerals of various kinds, and among others those of gold and silver. It was sparsely inhabited and in many districts of large extent was entirely unoccupied. The policy of congress as expressed in its numerous grants of public lands to aid in the construction of railroads has always been to exclude the mineral lands from them, and reserve them for special dispo-

sition, as seen in the following acts among others: Acts of July 1, 1862 (12 Stat. 489), and of July 2, 1864 (13 Stat. 356), making grants to the Union and Central Pacific companies; act of July 4, 1866 (14 Stat. 83), making a grant to the Iron Mountain Railroad company; act of July 13, 1866 (14 Stat. 94), making a grant to the Placerville, etc., railroad; act of July 25, 1866 (14 Stat. 239), making a grant to the California and Oregon railroad, sections 2 and 10; act of July 27, 1866 (14 Stat 292), making a grant to the Atlantic and Pacific railroad and to the Southern Pacific railroad; act of July 2, 1867 (14 Stat. 548), making a grant to the Stockton and Copperopolis railroad; act of March 3, 1871 (16 Stat. 573), making a grant to the Texas Pacific railroad. In all of these cases, and in all grants of public lands in aid of railroads, minerals (except iron and coal) have uniformly been reserved, and in no instance has such a grant been held to pass them. Patents issued after an examination and determination of the fact by the government whether portions of the land embraced in such grants did or did not contain minerals have been held as conclusive in subsequent controversies, and of this we shall speak more fully hereafter; but grants in aid of railroads (and we speak of no other grants) before such determination and issue of a patent have never been held to pass the minerals.

When the act was passed making the grant to the plaintiff, it would have been impossible to state with any accuracy what parts of the tract contained minerals and what did not. That fact could only be ascertained after extensive and careful explorations, and it is not reasonable to suppose that congress would have left that important fact dependent upon the simple designation by the plaintiff of the line of its road, and the possible disclosure of minerals by the way, instead of leaving it to future and special explorations for their discovery To suppose that congress intended any such limitation would be to impute to it a desire that its exclusion of minerals from the grant should be defeated, which it is impossible to admit. It is conceded that in the interpretation of statutes like the one before us, reference may be had, not only to the physical condition of the country and surroundings, but that its political conditions and necessities may also be considered. The tract granted covered a belt believed to be rich in minerals, and the United States were at the time engaged in a terrific conflict for the preservation of the union, incurring an immense debt, exceeding two thousand millions, and many of their citizens engaged in the struggle, looked forward hopefully and confidently to this source for relief to the burdened treasury. And we cannot with reason suppose that, under the circumstances, the United States intended that the control of this source of wealth and relief should be taken from them. It passes belief that they could have deliberately designed in this hour of sore distress and fearful pressure upon their finances to give away to a corporation of their own creation not only an imperial domain in land but the boundless wealth that lay buried in a mineral region of 80,000 square miles. They knew that the mineral belt over which the proposed railroad was to pass was almost entirely unexplored. They, therefore, retained from their grant the mineral lands, whether known or unknown, and left the discovery of their minerals to future explorations, and their disposition to future legislation. We can never admit that at the time and under the circumstances upon which the grant was made, congress intended that its clear words of exclusion of minerals should be interpreted to mean the exact reverse—that when it declared that "no act of congress granting lands in aid of railroads" passed during the session of 1864 (the session at which the grant under consideration was made) should "be construed to embrace minerals," it meant that such act might be so construed Never has it yet fallen to congress to deceive by its legislation and juggle in this way.

To incorporate the word "known" into the act and add it to the description of the mineral excepted would also contravene a settled rule in the construction of grants like the one before us, that nothing will pass to the grantee by implication or inference, unless essential to the use and enjoyment of the thing granted, and that exceptions intended for the benefit of the public are to be maintained and liberally construed. As justly observed by counsel for the defendant in their very able brief, "the reservation in the grant of mineral lands was intended to keep them under government control for the public good, in the development of the mineral resources of the country, and the benefit and protection of the miner and explorer, instead of compelling him to litigate or capitulate with a stupendous corporation and ultimately succumb to such terms, subject to such conditions and amenable to such servitudes as it might see proper to impose. The government has exhibited its beneficence in reference to its mineral lands as it has in the disposition of its agricultural lands, where the claims and rights of the settlers are fully protected. The privilege of exploring for mineral lands was in full force at the time of the location of the definite line of the road, and was a right reserved and excepted out of the grant at that time."

Some weight is sought to be given by counsel of the plaintiff to the allegation that the lands in controversy are included in the section which was surveyed in 1868 and a plat thereof filed by the surveyor in the local land office in September of that year, from which it is asserted that the character of the land was ascertained and determined, and reported to be agricultural and not mineral. But the conclusive answer to such alleged determination and report is that the matters to which they relate were not left to the Surveyor General. Neither he nor any of his subordinates was authorized to determine finally the character of any lands granted, or make any binding report thereon. Information of the character of all lands surveyed is acquired of surveying officers, so far as knowledge respecting them is obtained in the course of their duties, but they are not clothed with authority to especially examine as to these matters outside of their other duties, or determine them, nor does their report have any binding force. It is simply an addition made to the general information obtained from different sources on the subject, In Cole vs. Markley (2 decisions Department of the Interior, relating to public lands, 847-849), Mr. Teller, when Secretary of the Interior, in a communication to the Commissioner of the General Land Office, speaks at large of the notations of surveyors, and says: "Public and official information was the object of these notations, with a view to preventing entry until the facts are finally determined. They should be, and they are, only prima facie evidence, and subject to rebuttal by satisfactory proof of the real character of the land." The determination of the character of the land granted by Congress, in any case, whether agricultural or mineral, or swamp or timber land, is placed in the officers of the land department, whose action is subject to the revision of the Commissioner of the General Land Office, and on appeal from him by the Secretary of the Interior. Under their direction and supervision the actual character of the land may be determined and fully established. The effect of a patent issued by them under the authority of Congress, as to such matters, we shall presently consider. In the present case the mineral character of the lands in controversy is conceded. They are alleged in the complaint to be mineral lands containing gold and silver and other precious metals.

Nor is there any force in the averments that in November, 1868, the plaintiff listed the section embracing the mineral lands in controversy, with other sections, as portions of its grant, and filed the lists in the local land office at Helena and paid the receiver's fees for filing the same; and that the Register and Receiver accepted, allowed and approved the list and certified the same to the Commissioner of the General Land Office, and that no part of the fees has ever been refunded. The act of congress does not provide that selections of the lands by the plaintiff, as a part of its grant, shall in any respect change its purport and effect and eliminate any of its reservations; nor does it empower the officers of the local land office to accept the list as conclusive with respect to such grant in any particular. There was, therefore, no obligation on the part of anyone to refund to the plaintiff the fees paid on filing the list mentioned, when an attempt is made to do away with its supposed effect.

There is, in our opinion, no merit in any of the positions advanced by the plaintiff in support of its claim to the mineral lands in controversy. The language of the grant to the plaintiff is free from ambiguity. The exclusion from its operation of all mineral lands is entirely clear, and if there were any doubt respecting it, the established rule of construction applicable to statutes making such grants would compel a construction favorable to the grantor.

Some reference should be made here to the language used in the cases of Deffeback vs. Hawke, (115 U. S. 399,) and Davis vs. Weibbold, (139 U. S. 507,) as it is contended that it is in conflict with the views expressed in the present case. If so, the writer of this opinion, who was also the writer of the opinions in both of the cases cited, must take the responsibility of any conflict of the views now expressed. It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations. Those doctrines only will eventually stand which bear the strictest examination and the test of experience.

The case of Deffeback vs. Hawke arose in this wise: The plaintiff asserted title to mineral lands under a patent of the United States, founded upon an entry under the laws of congress, for the sale of mineral lands. The defendant, not having the legal title, claimed a better right to the premises by virtue of a previous occupation of them by his grantor as a lot on a portion of the public lands appropriated and used as a townsite—that is, settled upon for purposes of trade and business, and not for agriculture, and laid out into streets, lots, blocks and alleys for that purpose. And it was held by this court that no title from the United States to land known at the time of sale to be valuable for its minerals, of gold, silver, cinnabar or copper could be obtained under the pre-emption or homestead laws, or the townsite laws, or in any other way as prescribed by the laws

specially authorizing the sale of such lands. These three cases, those under the pre-emption and homestead laws and townsite act, were classed together. It was found that under the pre-emption and homestead act, lands containing known saline deposits and mines could not be purchased. In the townsite act it was provided that by virtue of its provisions no title could be acquired to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession held under existing laws. And under the mineral act of Congress it was provided that in all cases lands valuable for minerals should be reserved from sale, except as otherwise expressly provided. The court held that under those acts, lands could be purchased which was not known to be mineral; and from this the inference was drawn that only lands known at the time of the sale to be valuable for minerals could be excluded, and if they were not thus known to be valuable for minerals a sale might be had. This was not a case arising upon a grant like the one under consideration at present; but inasmuch as the law of Congress authorized lands valuable for minerals to be sold generally under the mineral act, and excluded from sale mineral lands when claimed for homesteads or pre-emption or for townsites, it was thought that these conflicting provisions of the law would be reconciled by simply excluding from the sale lands known at the time to be mineral. But that case has no bearing upon the present one involving the construction of an act of Congress declaring in express terms that no mineral lands shall be conveyed by the grant made.

The case of Davis vs. Weibbold was an action on the part of a mineral claimant who had obtained a patent in January, 1880, of a parcel of land within the exterior limits of Butte townsite, subsequently to the patent of the townsite.

When the entry of the townsite was had and the patent issued, and a sale was thereafter made to the defendant of the lots held by him, it was not known—at least it does not appear that it was known—that there was any valuable mineral lands within the townsite, and the question was whether in the absence of this knowledge the defendant, who claimed under the townsite patent, could be deprived by the laws of the United States of the premises purchased and occupied by him, because of a subsequent discovery of minerals in them, and the issue of a patent to the discoverer under whom the plaintiff claimed. The court said that the declaration that no title could be acquired under the provisions relating to such townsites and the sale of lands therein to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession held under existing laws, would seem on first impression to constitute a reservation of such mines in the land sold, and of mining claims on them, to the United States; but such was held not to be the necessary meaning of the terms used; in strictness they imported only that the provisions by which the title to the land in such townsites was transferred should not be the means of passing a title also to mines of gold, silver, cinnabar or copper in the land, or to valid mining claims or possessions thereon; but that they were to be read in connection with the cause protecting existing rights to mineral veins; and with the qualification uniformly accompanying exceptions in acts of Congress of mineral lands from grant or sale. Thus read, the court held that they merely prohibited the passage of title under the provisions of the townsite law to mines of gold, silver, cinnabar or copper, which were known to exist on the issue of townsite patent and to mining claims and mining possessions, in respect to which such proceedings had been taken under the law or the custom of miners, as to render them valid, creating a property right in the holder, and not to prohibit the acquisition for all time of mines which then lay buried unknown in the depths of the earth. The patent for the townsite was therefore held to cover minerals subsequently discovered in the lands patented. The patent was in law a declaration that minerals did not exist in the premises when it was issued, and the subsequent acquisition of minerals in the townsite was within the specific authorization of the act of Congresss that all valuable minerals should be open for all exploration and sale. These facts make a marked distinction between that case and the case before the court, although it is conceded that some of the language used is broader than the necessities of the case required. Yet the effect given to the townsite patent in that case will be found not inconsistent with the views hereafter expressed in the present case.

Some effect is also sought to be given to the fact that Congress authorized the Northern Pacific Railroad Company to place a mortgage upon its entire property. Admitting that such is the fact, the conclusion claimed does not follow. Congress thereby only authorized a mortgage upon the property granted to the company, which was the lands without minerals. The mortgage could not cover more than the property granted. So also it is said that the states and territories through which the road passes would not be able to tax the property of the company unless they could tax the whole property, minerals as well as lands. We do not see why not. The authority to tax the property granted to the company did not give authority to tax the minerals, which were not

granted. The property could be appraised without including any consideration of the minerals. The value of the property excluding the minerals could be as well estimated as its value including them. The property could be taxed for its value to the extent of the title which is of the land.

The grant under consideration is one of a public nature. It covers an immense domain, greater in extent than the area of some of our largest states, and it must be strictly construed. It would seem from the frequency with which we have announced this doctrine that it should be forever closed against further question, but as the most extravagant pretensions are made in the plaintiff's construction of the present grant, we will venture to refer to one or two of the important judicial declarations on that subject.

The general rule, when grants relate to matters of public interest, is thus forcibly expressed by Chief Justice Taney: "The object and the end of all government," said the chief justice, speaking for the court, "is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the govern ment intended to diminish its power of accomplishing the end for which it was created. * * * The continued existence of a government would be of no great value, if by implications and presumptions it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it was desired to perform transferred to the hands of privileged corporations." (Charles River Bridge Co. vs. Warren Bridge Co., 11 Pet. 507).

In Leavenworth Railroad Company vs. United States, (92 U. S. 733,) this court said: "The rules which govern the interpretation of legislative grants * * * apply as well to grants of lands to states to aid in building railroads as to grants of especial privileges to private corporations. In both cases the legislature, prompted by the supposed wants of the public, confers on others the means of securing an object the accomplishment of which it desires to promote, but declines to undertake * * * If the terms are plain and unambiguous, there can be no difficulty in interpreting them; but if they admit of different meanings, one of extension and one of limitation, they must be accepted in a sense favorable to the grantor."

In Winona, etc., vs. Barney, (113 U. S. 618,) speaking of the construction of legislative grants, the court said: "They are to receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance. To ascertain that intent we must look to the condition of the country, when the acts were passed as well as to the purpose declared on their face, and read all parts of them together.

The earnest contention of the counsel of the plaintiff arises principally, we think, from an unfounded apprehension that our interpretation will lead to uncertainty in the titles of the country. If the exception of the government is not limited to known minerals the title, it is said, may be defeated years after the land has passed into the hands of the grantee, and improvements of great extent and value have been made upon its faith. It is conceded to be of the utmost importance to the prosperity of the country that titles to land and to minerals in them shall be settled, and not be the subject of constant and ever-recurring disputes and litigation, to the disturbance of individuals and the annoyance of the public. We do not think that any apprehension of disturbance in titles from the views we assert need arise. The law places under the supervision of the Interior Department and its subordinate officers, acting under its direction, the control of all matters affecting the disposition of the public lands of the United States, and the adjustment of private claims to them under the legislation of Congress. It can hear contestants and can decide upon the respective merits of their claims. It can investigate and settle the contentions of all persons with respect to such claims. It can hear evidence upon and determine the character of lands to which different parties assert a right and when the controversy before it is fully considered and ended, it can issue to the rightful claimant the patent provided by law, specifying that the lands are of the character for which a patent is authorized. It can thus determine whether the lands called for are swamp lands, timber lands, agricultural lands, or mineral lands, and so designate them in the patent which it issues. The act of Congress making the grant to the plaintiff provides for the issue of a patent to the grantee for the land claimed, and as the grant excludes mineral lands in the direction for such patent to issue, the land office can examine into the character of the lands and designate it in its conveyance.

It is the established doctrine, expressed in numerous decisions of this court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the land department to issue a patent for such lands upon the ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition of mistake, its determination is conclusive against collateral attack.

In Smelting Co. vs. Kemp, (104 U. S. 651,) this court thus spoke of the land department in the transfer of public lands: "The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of that title the law has made numerous provisions designating the persons who may acquire it and the terms of its acquisition. That the provisions may be properly carried out, the land department, as part of the administrative and executive branch of the government, has been created to supervise all the various proceedings taken to obtain the title from their commencement to their close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration and to pass upon its competency, credibility and weight. In that capacity they exercise a judicial function, and therefore it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to their notice in a collateral proceeding. Their judgment in such cases is like that of other special tribunals upon matters within their jurisdiction, unassailable except by a direct proceeding for its correction or annulment. The execution and record of the patent are the final acts of the officers of the government for the transfer of its title, and as they can be lawfully performed only after certain steps have been taken, that instrument, duly signed, countersigned and sealed, not merely operates to pass the title, but is in the nature of an official declaration by that branch of the government to which the alienation of the public lands under the law is intrusted, that all the requirements preliminary to its issue have been complied with. The presumptions thus attending it are not open to rebuttal in an action at law."

In Steele vs. Smelting Company (106 U. S. 450), the language of the court was that: "The land department, as we have repeatedly said, was established to supervise various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation."

In Heath vs. Wallace (138 U. S. 573), it was held that "the question whether or not lands returned as 'subject to periodical overflow' are 'swamp and overflowed lands' is a question of fact properly determinable by the land department." And Justice Lamar added: "It is settled by an unbroken line of decisions of this court in land jurisprudence that the decisions of that department upon matters of fact within its jurisdiction are, in the absence of fraud or imposition, conclusive and binding on the courts of the country." If the land department must decide what lands shall not be patented because reserved, sold, granted or otherwise appropriated, or because not free from preemption or other claims or rights at the time the line of the road is definitely fixed, it must also decide whether lands are excepted because they are mineral lands. It has always exercised this jurisdiction in patenting lands which were alleged to be mineral, or in refusing to patent them because the evidence was insufficient to show that they contained minerals in such quantities as to justify the issue of the patent. If, as suggested by counsel, when the Secretary of the Interior has under consideration a list of lands to be patented to the Northern Pacific Railroad Company, it is shown that part of said lands contain minerals of gold and silver, discovered since the company's location of its road opposite thereto, he would not perform his duty, stated in Knight vs. Land Association (143 U. S. 178), as the "supervising agent of the government to do justice to all claims and preserve the rights of the people of the United States," by certifying the list until corrected in accordance with the discoveries made known to the department. He would not otherwise discharge the trust reposed in him in the administration of the law respecting the public domain.

There are undoubtedly many cases arising before the land department in the disposition of the public lands where it will be a matter of much difficulty on the part of its officers to ascertain with accuracy whether the lands to be disposed of are to be deemed mineral lands or agricultural lands, and in such cases the rule adopted that they will be considered mineral or agricultural as they are the more valuable in the one class or the other, may be sound. The officers will be governed by the knowledge of the lands ob-

tained at the time as to their real character The determination of the fact by those officers that they are one or the other will be considered as conclusive.

The case of the Central Pacific Railroad Company vs. Valentine (11 L. D. 238, 246) the late Secretary of the Interior, Mr. Noble, speaks of the practice of the land department in issuing patents to railroad lands. His language is: "The very fact, if it be true, that the office of the patent is to define and identify the land granted, and to evidence the title which, vested by the act, necessarily implies that there exists jurisdiction in some tribunal to ascertain and determine what lands were subject to the grant and capable of passing thereunder. Now, this jurisdiction is in the land department, and it continues, as we have seen, until the lands have been either patented or certified to, or for the use of the railroad company. By reason of this jurisdiction it has been the practice of that department for many years past to refuse to issue patents to railroad companies for lands found to be mineral in character at any time before the date of patent. Moreover, I am informed by the officers in charge of the mineral division of the land department that ever since the year 1867 (the date when the division was organized) it has been the uniform practice to allow and maintain mineral locations within the geographical limits of railroad grants, based upon discoveries made at any time before patent or certification where patent is not required. This practice having been uniformly followed and generally accepted for so long a time, there should be, in my judgment, the clearest evidence of error as well as the strongest reasons of policy and justice controlling before a departure from it should be sanctioned. It has, in effect, become a rule of property."

It is true that the patent has been issued in many instances without the investigation and consideration which the public interest requires; but if that has been done without fraud, though unadvisedly by officers of the government charged with the duty of supervising and attending to the preparation and issue of such patents, the consequence must be borne by the government until by further legislation a stricter regard to their duties in that respect can be enforced upon them. The fact remains that under the law the duty of determining the character of the lands granted by Congress, and stating it in instruments transferring the title of the government to the grantees, reposes in officers of the land department. Until such patent is issued, defining the character of the land granted and showing that it is non mineral, it will not comply with the act of Congress in which the grant before us was made to plaintiff. The grant, even when all the acts required of the grantees are performed, only passes a title to non mineral lands; but a patent issued in proper form, upon a judgment rendered after a due examination of the subject by officers of the land department, charged with its preparation and issue, that the land were non-mineral, would, unless set aside and annulled by direct proceedings, estop the government from contending to the contrary, and, as we have already said, in the absence of fraud in the officers of the department, would be conclusive in subsequent proceedings respecting the title.

The delay of the government in issuing a patent to the plaintiff, of which great complaint is made, does not affect the power of the company, to assert in the meantime, by possessory action, (as held in Deseret Salt company vs. Tarpey, 142 U. S. 241,) its right to lands which are non mineral. But such delay, as well observed, cannot have the effect of entitling it to recover, as it contended in this case, lands which it admits to be mineral. The government cannot be reasonably expected to issue its patent, and it is not authorized to do so, without excepting mineral lands, until it has had an opportunity to have the country, or that part of it for which a patent is sought, sufficiently explored to justify its declaration in the patent, which would be taken as its determination, that no mineral lands exist therein.

On the other hand, an affirmance of the judgment in this case would enlarge the grant of the government against its oft-repeated exception of mineral lands, and give to the plaintiff the vast mineral wealth of the states through which the grant passes. It would render the plaintiff corporation imperial in its resources—one that would far outshine "the wealth of Ormus and of Ind." And, as counsel justly observes, the same rule would apply to all our trans-continental railroads and give to them nearly all our mineral lands, when Congress has time and again declared that they should have no mineral lands, and that no act of Congress should be construed to give them any; and that they "in all cases shall be and are reserved exclusively to the United States unless otherwise specially provided in the act or acts making the grant."

It is unnecessary to pursue this subject any further. We will only observe that we do not notice the numerous assertions made as to what has been decided by this court, and what is the settled rule in cases of railroad grants by Congress, the correctness of which assertions we do not admit. The official reports will disclose wherein the errors lie, sufficiently for the attainment of accuracy of statement in matters of judicial decision.

The plaintiff in this case, not having a patent, and relying solely upon its grant, which gives no title to the minerals within any of its lands, shows by its complaint no cause of action for the possession of the mineral lands claimed. The demurrer of the defendants should have been sustained, and judgment entered thereon in their favor.

It follows that the judgment of the Circuit Court in this case must be reversed and the cause remanded to that court with instructions to sustain the demurrer of the defendants and enter judgment thereon in their favor with costs. And it is so ordered.

ANNUAL REPORT

OF THE

Mineral Land Commissioner

FOR THE

STATE OF MONTANA

For the Year Ending November 30, 1894

HELENA, MONTANA
STATE PUBLISHING COMPANY
PRINTERS, BINDERS
1894

OFFICE OF MINERAL LAND COMMISSIONER,
BUTTE, Montana, November 30, 1894.

TO HIS EXCELLENCY JOHN E. RICKARDS,
Governor of Montana.

SIR:—

In compliance with the requirements of the law, I have the honor to hand you a report of the Mineral Land Commissioner of the State of Montana, for the year ending November 30, 1894.

Respectfully submitted,

GEO. W. IRVIN, Commissioner.

ANNUAL REPORT

OF THE

Mineral Land Commissioner

BUTTE, Montana, November 30th, 1894.

To HIS EXCELLENCY JOHN E. RICKARDS,
Governor of Montana.

SIR:—From the time in October, 1893, when it was found that the case of the Northern Pacific Railway Company versus Richard P. Barden et al. was impossible of hearing, for the reason that political complications within the administration prevented a full bench in the Supreme Court, until the confirmation of Mr. Justice White, it was impossible to make any progress in determining the rights of the people and the United States in the mineral lands within the limits of the Northern Pacific land grant in the State of Montana.

Finally, on the 11th day of April, 1894, before a full bench, our case was taken up and argued and fully heard, the Honorable the Solicitor-General of the United States, Lawrence J. Maxwell, and Hons. W. W. Dixon and Chas. S. Hartman appearing for the defendant and appellant, the State of Montana, and James McNaught and James C. Carter for plaintiff and respondent, the Northern Pacific Railway Company. Our side of the case was ably and exhaustively presented by counsel, eliciting from the Court expressions indicating the closest attention and the fullest comprehension; and when it was submitted

our friends in attendance upon the hearing felt that the decision was to be with us.

In this we were not mistaken. On the 26th day of May, 1894, the Supreme Court, through Mr. Justice Field, handed down a decision favorable to our side of the cause, a copy of which is appended hereto. The subject of this opinion, all important to the mining interests of the State of Montana, and, indeed, to all other mining states, is as follows, to-wit:

That the Northern Pacific Railway Company, under its land grant, acquired no title or right to land valuable for mineral (except coal and iron), and that such lands were expressly excluded from the grant; that the Land Department of the Government, under laws now existing or hereafter to be enacted, had the power, and it was its duty, to investigate and determine the mineral or other character of the lands within the grant before it issued any patent to the Railway Company, and that the Company had no claim to any land known to be valuable for mineral before patent to it.

The opinion says that it was never the intention of Congress to grant any lands valuable for mineral to the Railway Company; but, on the contrary, the intention was to preserve all such lands for exploration and purchase by citizens of the United States.

Animated by the belief that the way was now cleared for favorable legislative action, Hon. C. S. Hartman and the undersigned undertook to bring up for consideration H. R. 3476, a copy of which is appended hereto and which provided, briefly:

For the examination and classification of lands within the Northern Pacific Railroad grant by Commissioners in each Land District of Montana and Idaho through which the road passed; for reports by such Commissioners as to what lands within the grant were mineral; for objections and contests against such reports by the Railroad Company or other persons interested, and for hearings to determine any question in dispute before the Land Department.

The bill provided for an examination of unsurveyed as well as surveyed lands, and its object was to settle, after as careful an examination as practicable, what were mineral and what were non-mineral lands before the issuing of any patents to the Railroad Company.

This bill was especially intended to provide against the necessity of going to the Courts with every dispute that might occur between the people and the Railway Company within the land grant. It had the endorsement of the Interior Department, as will be seen by reference to the letter, of date August 29th, 1893, from the Honorable the Commissioner of the General Land Office, duly endorsed by the Honorable the Secretary of the Interior; and it had been passed through the different stages of committee proceedings until, at last, it was upon the calendar for final passage.

Then came the interesting process of getting consideration for the measure. We enlisted the good offices of the Commissioner of the General Land Office and secured from him private personal endorsement. We obtained the active, earnest and honest

support of the Chairman of the House Committee on Public Lands, Hon. T. C. McRae. The Honorable Speaker promised us, in the most friendly manner, that we should have consideration. He was emphatic in his endorsement of the measure, and declared that it was a legitimate conclusion of the decision of the Supreme Court. We were treated in the House of Representatives most cordially and fairly, and have nothing to complain of; but the weary waiting and the disappointing incidents during a period of over a month of endeavor to make progress, were at times most discouraging.

Finally, through the aid of the Speaker and Chairman McRae, the long looked for opportunity arrived, and on the 24th day of July, 1894, the bill passed the House substantially as introduced. We made haste to have it engrossed and transmitted to the Senate, hoping to advance it as far as possible during the few remaining days of the session. We knew that there was no possibility of its becoming a law, because it was a matter of public knowledge that there was no quorum of the Senate in Washington and only those measures could be enacted that could obtain unanimous consent.

Through the efforts of Senator Power, we obtained immediate consideration before the sub-committee, consisting of Senator McLaurin, of Mississippi, and Senator Dolph, of Oregon, and a hearing was granted to Representative Hartman (Montana), Representative Sweet (Idaho), Senator Shoup (Idaho), and your Commissioner. A favorable majority report was easily obtained; but we sought for several days to so adjust matters that a unanimous report from the sub-committee might be brought about. In this we failed; and as a result of this hearing and our efforts in conjunction therewith, we became convinced that every possible effort would be made by the Northern Pacific Raiway Co. to defeat the measure. Mr. Dolph, of Oregon, is clearly a Senator favorable to the Company, and is and will be active in promoting their interests. We recognize in him a man of considerable ability and untiring industry, and believe that he is determined to use his best efforts to our injury. He proposed a series of amendments, which would confine the examination by the Commissioners to such lands within the grant as were now known to be mineral, eliminating from their consideration all

lands the mineral character of which might be determined by the fact of their being within a mineral bearing range or because of their proximity to known mines. His amendments provided, among other things, for such modification of Section 3 of the bill as would encumber the segregation of unsurveyed tracts within the grant to such an extent as to render the remedy impracticable. The general tendency of all of his propositions were so hostile that it was found impossible to entertain them, and all hope of agreement was necessarily abandoned.

On the 30th day of July, 1894. the Senate Committee on the Public Lands was ready to take up and consider the House bill, which had now become, by substitution of Senator Power's bill, Senate bill No. 434, and all parties on the side of Montana were prepared for the hearing, when Senator Pasco called the attention of Senator Power to a letter from the Honorable the Commissioner of the General Land Office, of even date, addressed to the said Senator as Acting Chairman of the Senate Committee on the Public Lands, wherein it was stated that by reason of the decision of the Supreme Court of the United States in the Barden case (hereinbefore mentioned), and because of certain rules and regulations promulgated by the Interior Department on July 9th, 1894, the legislation asked of Congress by the State of Montana was unnecessary; and also recommending that the pending Senate bill (No. 434), which he had before so highly recommended, "be not enacted into law."

The friends of the measure were astounded at this sudden and unheralded change in the position of the Interior Department and proceeded to examine the aforesaid rules, issued twenty days prior, and a copy of which had not been furnished the Senator, Representative or Commissioner from Montana. The rules were found to be framed, whether intentionally or not, wholly in the interest of the Northern Pacific Railway Co. and entirely enimical to the interests of the people of Montana and the United States Government. In view of the friendly attitude up to this time of the Honorable Commissioner and the Honorable Secretary of the Interior, as expressed in their letters to the Senate Committee on the Public Lands of August 29th, 1893, and opinions the very reverse contained in their respective letters to the same Committee less than a year later, and of the code of rules and regulations of July 9th, 1894, hostile to all purposes of our

bill, and being conscious that the first session of the 53rd Congress was dying of physical and mental exhaustion, it was deemed best to ask the Committee for a postponement until the second session of said Congress, when we felt that we would be able to meet the new conditions of affairs more advantageously.

The situation, as it was left at this point, is fully elaborated in the correspondence, herein set out at length, to-wit:

The letter from the Honorable the Commissioner of the General Land Office to the Senate Committee on the Public Lands, dated August 29th, 1893:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., August 29, 1893.

SIR:—I have the honor to submit my report, in duplicate, on Senate bill No. 434, first session Fifty-third Congress, entitled "A bill to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho," referred to me August 22, 1893.

The bill proposes a method for the examination and classification of lands, as to their mineral and non-mineral character, which are within the land grant and indemnity limits of the Northern Pacific Railroad, as defined by an act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior ta Puget Sound, on the Pacific Coast, by the northern route," approved July 2, 1864, and acts supplemental and amendatory thereof (13 Stat., 365, also 16 Stat., 378).

The provisions of this bill are very nearly identical with those of H. R. bill No. 6831, first session Fifty-second Congress, upon which a report was made by this office to the honorable Secretary on March 26, 1892.

The principal difference between the bills being that, in this bill provision is made for the appointment of three commissioners in each of the land districts of Bozeman, Helena and Missoula, in the State of Montana, and Cœur d'Alene in the State of Idaho, whereas said bill No. 6831 provided for the appiontment of only three commissioners in both States.

Upon a careful consideration I am satisfied that there is urgent necessity for Congressional legislation in the nature of that embraced by the bill now under consideration.

In the main I am in accord with the recommendations contained in the report above referred to upon this proposed legislation, and for the purposes of this report I shall, to a very large extent, adopt the former.

Section 3 of the act granting lands to the Northern Pacific Railroad Company granted every alternate section of public not and mineral, designated by odd numbers, to the amount of 20 alternate sections per mile on each side of said railroad line, through the Territories of the United States. In addition to the grant made, certain indemnity provisions extended the grant beyond the original limits. The particular region of country covered by the act was under a territorial form of government at the time of its approval. A careful perusal of the act will disclose the fact that three things were required to designate the specific land intended by the grant to pass to the company:

(1) It was necessary that the company should definitely locate its line of road.

(2) That the land should be surveyed in order that the alternate sections might be known.

(3) That the character of the land should in some manner be determined.

The first requirement the company complied with by definitely locating and constructing its road. The second requirement is being complied with by the extension of the public surveys, but for the third requirement, to-wit, the classification of the land as to its mineral or non-mineral character, no express legislative provision has been made.

Vast deposits of gold, silver, copper, and lead have been discovered within the grant and indemnity limits of said road in the States mentioned in this bill, and new discoveries of valuable mines are constantly being made therein. I have no doubt that it can be shown from trustworthy authorities that within the region covered by this bill large undeveloped deposits of valuable minerals exist which are of great magnitude and value.

In the States mentioned, said company has filed selection lists embracing large quantities of land, and the records of this office show that mines have been discovered and developed within the boundaries of many of the tracts of land selected, and that new discoveries on the odd sections are being made from day to day.

The extent of the grant, and the magnitude of the interests involved, and its great importance to the general public, imperatively demand some legislation whereby the lands, which rightfully and lawfully belong to the railroad company within the states named, may be designated, and those lands that are not affected by the grant; although within alternate odd-numbered sections, may be specified.

As to the quantity of land within the Northern Pacific land grant and indemnity limits, in the states of Montana and Idaho, the quantity surveyed within said grant, the number of acres selected by the company, and the present status of such selections, the following is submitted as an approximate estimate:

	Acres.
Granted in Montana	17,838,080
In 10-mile indemnity limits	4,992,000
Selected by company, now pending	4,336,285
Surveyed within the grant	14,758,720
Granted in Idaho	1,900,800
In 10-mile indemnity limits	576,000
Selected by the company, now pending	122,000
Surveyed within the grant	403,200

No lands have been patented to the company in either of said states. The selections made by the company of said lands in those states are pending before this office, and the adjustment of them necessarily involves the question of the character of the lands affected by the granting act, which must ultimately be determined by the Department.

The grant to this company within the said states ought to be adjusted with as little delay as a proper regard for the rights and interests of all concerned therein will admit of; but in case the grant is adjusted by patenting to the company such lands within its limits as are not now known to contain mineral, without special examination, it is clear that many tracts will be so transferred that will ultimately be found to contain minerals in paying quantities. It is thought by some, who have had opportunity to be well informed, that at least one-third of the land within the limits of the grant in said states is mineral in character.

To me it is very clear that a law should be passed by Congress enabling the Land Department to thoroughly investigate the character of lands supposed to be mineral and within the reservation of the law, before the railroad company is entitled to patent; and inasmuch as this bill has for its purpose and object a careful examination and a just and intelligent classification of this great body of lands, with reference to their mineral or non mineral character within the meaning of the granting act by competent officers, and the speedy and equitable determination of the rights of the government and the said company, within the primary and indemnity limits of the grant in said states, as well as the protection of the public interests in so much of the land affected by the grant as was not intended for the company, I recommend its passage.

Your predecessor's annual report, dated November 15, 1889, contains the following observations relative to mineral lands in railroad grants, from which I quote so much as is deemed pertinent and appropriate for the purposes of this report:

"The question presents itself in regard to the mineral lands lying within the grants of the railroads running through the mineral belts, and which would otherwise than because of their mineral character be included within the railroad grants. The act of Congress absolutely and unqualifiedly reserves all mineral lands from the railroad grants made to the most extended and important railroads of our country, and this reservation affects the claim of such a road as the Northern Pacific to a great part of its land subsidy. It also effects to a very considerable degree the Central and Southern Pacific roads, with some others; and how to determine what are mineral lands at this time when the roads are claiming their grants is indeed a difficult and most important matter. Originally it was left to the company to make affidavit in a form adopted by my predecessors and by them deemed sufficient for a long while, but by which it was not made necessary for the officer taking the oath to swear to his actual knowledge that the land was not mineral.

"Many of the selections made by the railroads under their grants were supported by such affidavit, but upon the same coming before the Commmissioner (Sparks) of the General Land Office he demanded that a further affidavit should be made, the same as required from settlers on homestead claims, whereby actual knoweldge of the facts that the

same was not mineral land was required to be sworn to. This the railroad companies have failed to do, insisting that their claims, made under the regulations at the time existing, are valid and should be allowed. This question is not yet determined, but it is deemed a matter to which your attention should be invited for the purpose of having, if necessary, some further legislation upon the subject. On the one hand it is to be noted that the additional affidavit has been required since the selections were claimed; on the other, stands the absolute reservation of the law and the right of the people to enjoy these mineral lands, if such indeed there be among the selections made by the railroads.

"If legislation is not made on this subject the department will have to decide by such light as may be obtained as to the real nature of the lands, whether mineral or not, however difficult the inquiry may be and whatever the responsibility assumed. It is deemed, however, that a law should be passed by Congress enabling the land department to thoroughly investigate the character of lands supposed to be mineral and within the reservation of the law before the railroad is entitled to any cession whatever It would require a considerable appropriation for the purpose of investigation and survey; and connected with this, authority should be given to the Secretary of the Interior to refuse to certify lands to the railroads until there was clear proof that the same was not mineral. The question is most important. It is far reaching in its results and may effect the welfare and independence of many of our citizens. It would not be unreasonable to direct that the patents issued should themselves contain a reservation of any land therein described if it prove upon further development to be actually mineral land.

"The mineral land should be preserved for our people, and there is no claim on the part of the railroads to obtain these sources of vast wealth not intended for them that should be humored to the least degree beyond the law. This I say in no spirit of hostility to the railroad companies, but from a thorough conviction that the best interests of the republic would be served by dividing this vast mineral wealth among individuals, rather than by allowing it by any means to fall into possession and control of large corporations. It is not intended to be granted to them, and they should not be allowed to obtain it by default. Sufficient means of proving exactly what the character of the lands is should be provided."

Believing, as I do, that there is urgent necessity for legislation of the kind proposed by this bill, and recommending the enactment of its principal provisions, I deem it proper, however, to suggest for your consideration whether or not the third section thereof embodies definitions of "mineral lands" materially different from the definitions of those terms found in decisions of the U. S. Supreme Court, viz., in Deffeback vs. Hawk (115 U. S., p. 404); United States vs. Mining company (128 U. S., 683), and in Davis's Administrator vs. Wiebold (139 U. S., p. 519), and, if so, whether any amendment of said section is necessary. My purpose in calling attention to this point is to emphasize the importance of so framing that section that in case it should become a law it would be very certain to withstand the severe test of the highest judicial scrutiny to which it will undoubtedly be subjected.

Your attention is also called to the provision in said third section of the bill, that a single mining claim found within a section of land shall be prima facie evidence that the entire section on which such claim is located shall be considered as mineral land.

I would suggest an amendment in this particular, so as to make such mining claim prima facie evidence of the mineral character only of the *40-acre* tract within which it is situated.

The magnitude of the interests involved in this proposed legislation renders an appeal to the highest courts of the land more than probable in case it should be enacted, and it would therefore seem necessary to exercise the most thoughtful care in framing its separate sections.

The foregoing represents my view upon this important bill, and it is submitted in accordance with your request.

Copy of the bill received is herewith inclosed.

Very respectfully,

S. W. LAMOREUX.
Commissioner.

THE SECRETARY OF THE INTERIOR.

The letter from the same Commissioner to the same Committee, dated July 30th, 1894:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 30, 1894.

SIR: I have the honor to acknowledge the receipt, by reference from the department, for report in duplicate and return of papers of a communication from Hon. Samuel Pasco, acting chairman of the Senate Committee on Public Lands, transmitting "for another or supplemental report" Senate bill No. 434, entitled, "A bill to provide for the examination and classification of certain mineral lands in the states of Montana and Idaho."

The bill provides for the appointment of three commissioners for each of the following land districts: Bozeman, Helena and Missoula, in the State of Montana, and Cœur d'Alene, in the State of Idaho, to examine and classify lands, as to their mineral or non-mineral character, within the land grant and indemnity limits of the Northern Pacific Railroad, as defined by an act of Congress, entitled, "An act granting lands to aid in the construction of a railroad," etc., approved July 2, 1864 (13 Stats., 365; also 16 Stats., 378).

August 29, 1893, I had the honor to submit to the department a report, in duplicate, on this bill recommending, subject to some modifications therein indicated, its enactment. Since said report, the decision of the Supreme Court in the Barden case, hereinafter cited, has been rendered to the effect that the department has sufficient authority, without further legislation, to make all needful rules and regulations to classify public lands embraced within all grants in which there is a reservation of mineral.

The communication of the honorable acting chairman of the Public Lands Committee makes reference to the great necessity that exists for some action on the part of the government in this matter, which shall include *all* of the mineral land states, and raises the question "whether any legislation is necessary, and if the matter cannot be adjusted by regulations of the Interior Department."

I submit herewith a copy of my report of Aug. 29, 1893, and at the same time embody my present views in answer to the questions above referred to.

The estimated number of acres in the grants to the Pacific railroads in the mineral-land states and territories, and the number of acres patented to each, is shown in the following table:

PACIFIC RAILROAD IN MINERAL-LAND STATES.	Estimated Area in Grant.	Area Patented.
Atlantic & Pacific—		
Arizona	10,240,000	373.099.38
California	8,384,000	.....
New Mexico	11,520,000	335,424.09
Central Pacific—		
Nevada	7,997,600	420,483.92
Utah		404,392.96
California		489,042.78
C. & O., California	3,724,800	1,790,260.90
W. P., California	1,100,000	450,297.43
O. & C., Oregon	3,840,000	1,668,045.01
Northern Pacific—		
Dakota	11,520,000	2,675,760.41
Montana	17,838,080	.....
Idaho	1,900,800	.....
Oregon	3,575,680	422.75
Washington	11,258,880	716,172.36
Southern Pacific—		
California	11,964,160	*2,228,604.85
		†368,085.90
Union Pacific—		
Colorado	700,000	640.00
Denver Pacific, Colorado	100,000	209,349.25
Wyoming	4,600,000	79,682.03
Utah	1,100,000	40,196.49
Total	112,364,000	12,249,960.55

*Main. †Branch.

It has been estimated by the best authority obtainable that one-third of the lands within the railroad grants in the 12 mineral states and territories is mineral land. Accepting the above estimate as a basis, over 30,000,000 acres of mineral lands are within such railroad grants, and developments are constantly proving that these lands are the great store houses of large deposits of the precious metals.

The questions submitted, which will be answered in detail, are as follows:

(1) Whether, if any legislation is required, it should not be general, embracing all the states and territories in which there are railroad grants?

In reply to this question, I would answer, yes Most of the grants mentioned on page 3 contain more or less mineral, and there would seem to be no good reason for excepting any state or territory *containing mineral* from such legislation.

By the terms of their grants mineral lands, except coal and iron, are excepted from the operations of all said grants, and any action taken in this matter should apply equally to all of such railroads in said mineral-land states and territories, *and to the various state grants as well.*

(2) Whether any legislation is necessary, and if the matter cannot be adjusted by regulations of the Interior Department.

I am of the opinion that no legislation can be had that will satisfactorily meet all the conditions arising in the adjustment of these grants. Taking the present bill as a basis, and applying its provisions to all of said states and territories, it would require the appointment of commissioners for at least 20 land districts. This would require 60 commissioners, with the necessary additional help, to examine and determine the character of *30,000,000 acres of land.* The time, labor and expense necessary to complete an examination of these lands is a matter of mere conjecture, but taking into account the vast area involved, this expense could not but be enormous. I do not think that the proposed commission could satisfactorily accomplish the purpose for which it would be created.

The files of the General Land Office contain a vast amount of matter touching upon the mineral character of the public lands, consisting of mineral entries, mineral applications, affidavits and protests concerning specific tracts and localities, together with the returns of the various deputy surveyers by whom the public surveys are made. Pending lists of selections are all examined in connection with these records.

The work of a commission under this bill at best would be but superficial. To examine thoroughly into the character of each smallest legal subdivision of the 30,000,000 acres involved, to publish lists thereof and to take testimony relative thereto, would take years of time, and would entail expense no one can estimate, an expense which should not be charged to the United States.

It is a fair proposition that the beneficiaries under the various grants should pay the expense incident to the patenting of their lands.

The department from its records can, better than any commission, determine the amount and quality of proof necessary to be submitted, and can do this at a very modest cost to the government.

The regulations of the department in the matter are much simpler and more effective, and are more likely to accomplish the evident intent of the law. The recent decision of the United States Supreme Court in the case of Barden vs. the Northern Pacific Railroad Company (154 U. S., p. 288), sustains the position of the department as to the status of mineral lands within railroad grants (11 L. D., 239), and holds that "under the law the duty of determining the character of lands granted by Congress and stating it in instruments transferring the title of the government to the grantee reposes in officers of the land department." (See also 142 U. S., p. 161.)

The department, in the exercise of its authority, requires notice to be given by publication and posting of all applications to select lands returned as mineral and the submission of satisfactory proof that the land is in fact non-mineral in character. (See circular of July 2, 1894, inclosed.) It has even gone further than that and has required publication and posting for selections of lands in proximity (within 6 miles) to lands containing mining claims (18 L. D., 477, and departmental instructions of July 9, 1894).

This would seem to cover satisfactorily all selections falling within what are now well known mineral regions. It is fair to both the corporation and to the government to assume that all lands within 6 miles of known mines are prima facie mineral, and that lands beyond that distance are prima facie agricultural. This places the burden of proof upon the one denying such presumption. While this rule is an arbitrary one, it is not thought to be oppressive.

The railroad companies have pending before this office lists of selections approxi-

mating 25,000,000 acres of surveyed lands adjoining the constructed portions of their roads, and are, therefore, entitled to receive patent at an early date for such land, if found to be of the character described in the grant. It would be manifestly unjust to delay action indefinitely on said lists of selections simply because of the theory that the lands may at some future time be found to be valuable for mineral.

Under the regulations of July 2, 1894, and July 9, 1894, ample opportunity is afforded the corporation and the citizen to secure a thorough investigation as to the character of any particular tract of land.

(3) If legislation is required, the character of the required legislation indicated by amendments to the present bill or by draft of a new bill.

As hereinbefore stated, the decision of the Supreme Court in the case of Barden vs. Northern Pacific Railroad Company (154 U. S., 288) finds that the land department has full authority and that it is its *duty* to classify and determine the character of all lands within railroad grants, and I do not think further legislation on this point necessary.

(4) Whether if the question of the character of such lands is to be left undetermined until patent issues some legislation should be had to hasten examination and quiet title.

The various lists of selections now pending before this office are being examined and passed upon as rapidly as is thought to be consistent with the interests of all concerned.

The greater number of mining claims are held and worked by virtue of locations made under section 2622, U. S. Revised Statutes, the number on which entry is made being relatively small.

Of these mining locations the department knows nothing, and it frequently happens that lands, to which miners have acquired vested rights, are patented under grants to corporations or to States as agricultural.

The department could more fully protect the rights of bona fide mineral claimants, and prevent valuable mineral lands from being disposed of under other laws, if section 2324, United States Revised Statutes, were amended so as to require the mineral claimant, within thirty days after making his location, to file in the local land office, for notation and transmittal to the General Land Office, a certified copy of the location certificate thereof; describing the locus of his claim (by section, township, and range, when possible), otherwise said location should be void. This amendment should apply as well to locations heretofore made.

Such a law would place the department in possession of a vast fund of information as to the character or alleged character of the public lands.

Lands covered by such locations might then be treated as prima facie mineral, and the burden of disproving this presumption would rest upon those applying to take under other laws.

I recommend the enactment of such an amendment to section 2324, United States Revised Statutes.

(5) Whether any recent rules or regulations by the department have been issued on the question.

The regulations of the department have been named in the answer to the second question submitted, and copies thereof are herewith inclosed.

(5) The definition of mineral lands as adopted by the Department and the courts.

The definition of mineral lands as adopted by the Department and the courts, so far as the disposition of the public lands are concerned is, that lands are mineral when they contain mineral in sufficient quantity and quality to render them more valuable for mining purposes than for agriculture. It must be observed that the question of the character of the land is a question of fact to be determined only upon full proof *as to the particular tract involved.* As hereinbefore stated coal and iron are not excepted from the grants.

(7) Any suggestions connected "with this important and difficult matter."

In view of what has already been said, I have no further suggestions to make at this time.

I have the honor to earnestly recommend that this bill, Senate No. 434, be *not* enacted into law.

I return herewith, as directed, the communication of Hon. Samuel Pasco and Senate bill No. 434.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

THE SECRETARY OF THE INTERIOR.

The letter of the Secretary of the Interior, in endorsement thereof, dated July 31st, 1894:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, July 31, 1894.

SIR:—I transmit herewith report from the Commissioner of the General Land Office of Senate bill No. 434, entitled "A bill to provide for the examination and classification of certain mineral lands in the states of Montana and Idaho," with the inclosures therein referred to.

The Commissioner in his report answers fully all the questions submitted in your letter of the 20th instant to the Department, and I concur in the conclusion therein reached without making further report thereon.

Very respectfully,

HOKE SMITH,
Secretary.

Hon. SAMUEL PASCO,
Acting Chairman Committee on Public Lands, U. S Senate.

A copy of the rules and regulations issued by the Secretary of the Interior, dated July 9th, 1894, and now in force:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, July 9, 1894.

SIR:—In the matter of the selection by railroad companies of lands in satisfaction of their grants the following rules and regulations will be observed in determining whether the lands selected are mineral or non-mineral lands:

(1) Where the lands have been returned by the surveyor-general as mineral a hearing may be had to determine the character of the land, under rules 110 and 111 of Rules and Regulations, issued December 10, 1891, controlling the disposal of mining claims.

(2) Where the lands selected by the company are within a mine al belt, or proximate to any mining claim, the railroad company will be required to file with the local land officers an affidavit by the land agent of the company, which affidavit shall be attached to said list when returned, setting forth in substance that he has caused the lands mentioned to be carefully examined by the agents and employes of the company as to their mineral or agricultural character and that to the best of his knowledge and belief none of the lands returned in said list are mineral lands.

Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of 6 miles from any mineral entry, claim or location, which list shall be transmitted to the Department for its approval. If any of the lands embraced in said list of selections are found upon examination to be within a radius of 6 miles from any mineral entry, claim or location, you will cause a supplemental list of said lands to be prepared, and return the same to the register and receiver of the district in which they are situated, and notify the railroad company that they have been so returned.

The register and receiver will at once cause notice to be published in such newspapers as shall be designated by the Commissioner of the General Land Office, containing a statement that the railroad company has applied for a patent for the lands, designating the same by townships, and has filed lists of the same in the local land office; that said lists are open to the public for inspection; that a copy of the same, by descriptive subdivisions, has been conspicuously posted in said land office for inspection by persons interested and the public generally; and that the local land officers will receive protests, or contests, within the next sixty days for any of said tracts or subdivisions of land claimed to be more valuable for mineral than for agricultural purposes.

At the expiration of said sixty days, the Register and Receiver will return to the Commissioner of the General Land Office said supplemental list, noting thereon any protests, or contests, or suggestions, as to the mineral character of any of such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said list. After the same shall have been returned by the register and receiver, you will first eliminate from said supplemental list all the lands that have been protested, or contested, or claimed to be more valuable for mineral than for agricul-

tural purposes, or concerning which any suggestion has been made as to their mineral character. The remaining lands you will certify to this department for approval and patenting as agricultural.

In regard to lands protested, or contested, or claimed to be mineral, or concerning which any suggestion has been made or report by the register and receiver as to their mineral character, you will order a hearing to be had by the local land officers in each case, after giving due notice to the persons furnishing such information and to the railroad company, under the existing rules and regulations of the Department concerning hearings in cases where the land has been returned as mineral land.

The railroad company shall pay to the register and receiver the cost of advertising said land in the manner set forth.

You are further instructed that all lists which have been heretofore prepared in accordance with any rules, regulations, or instructions of the Secretary of the Interior, where such rules have been complied with (such as furnishing affidavits showing the non-mineral character of the lands, in accordance with the instructions of the Interior Department), and such mineral affidavits furnished for each sub division of 40 acres shall be excepted from the terms of the foregoing regulations. Also, where lists of selections are now pending of lands returned by the surveyor-general as mineral, where hearings have been had in accordance with rules 110 and 111 of Rules and Regulations of December 10, 1891, above referred to, and the local officers have determined that said lands are non-mineral in character, and such determination have been approved by the General Land Office, such lands shall be submitted to the Department for approval without further investigation, although they may be within 6 miles of any mineral claim or location, unless since said hearing mineral claims or locations have been made of any tract embraced in said list, in which event you will eliminate said tract from said list and hold the same for further investigation

Very respectfully;

HOKE SMITH,
Secretary.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

The letter from Congressman Hartman, dated August 1st, 1894, calling upon the Honorable Commissioner of the General Land Office to verify his unexpected change of front; and his reply thereto, dated August 2nd, 1894:

AUGUST 1, 1894.

DEAR SIR: I have just finished reading your official letter of July 30, giving your views on the Senate bill for the examination and classification of mineral lands in Montana and Idaho.

This is a copy of the same bill that was introduced in the House by myself, that was favorably reported by the committee, and that passed the House on the 24th of July. It is also the same bill conderning which Mr. Irvin, mineral land commissioner from Montana, and myself held consultation with you on two or three different occasions, the last of which occurring some days after the rendition of the judgment of the Supreme Court of the United States in the Barden case. It is also the same bill, or copy of the same bill, that you reported favorably as Commissioner while the same was pending before the House, and concerning which you kindly wrote to Speaker Crisp a personal letter, asking that consideration might be had of it in the House.

I understood at all times that you were favorable to this bill, both from your written report and from your conversation concerning it, and, therefore, after consultation with Senator Power and Mr. Irvin, have concluded to write you this letter, thinking that there must have been some misunderstanding on your part as to the provisions of the bill concerning which you wrote your letter of July 30.

The only changes that were made in this bill on the floor of the House were simply changes as to the amount of compensation to be received by the commissioners, whose appointment was provided for, and slight limitations regarding the compensation of attorneys appointed to represent the United States, and a reduction of $20,000 in the sum total appropriated by the bill. So that the same principles are involved in this bill, and indeed the same language, with these slight modifications above noted.

This being the case, my conviction that some misunderstanding or mistake has been made induces me to write you this letter, in the hope that whatever error has occurred may be corrected, for the thought has suggested itself to me that your letter of July 30 might have been prepared by some law clerk or other party in the employ of the Department, and that the same had not been submitted to you or met with your approval.

An early reply will greatly oblige,

Yours, very truly,

CHAS. S. HARTMAN.

The COMMISSIONER OF THE GENERAL LAND OFFICE,

Washington, D. C.

The foregoing letter has been submitted to me and meets with my approval.

GEO. W. IRVINE,

Mineral Land Commissioner, State of Montana.

GENERAL LAND OFFICE,
WASHINGTON, August 2, 1894.

DEAR SIR :—In reply to your favor of yesterday in reference to the senate bill for the classification of mineral lands in Montana and Idaho, I have the honor to say that soon after the conversation we had (after the house bill had been before me and reported upon) I was directed by the Secretary of the Interior to prepare rules and regulations under the Barden decision. I prepared a draft of such rules and regulations as I thought would cover the case, and fixed a date for a hearing and notified all railroad companies and parties interested. A hearing was had upon the questions presented in the bill and in the rules and regulations as drafted. After full consideration and examination I found that from the terms of the bill, after the examination therein proposed, the Department would have no information upon which to found a hearing, as suggested in the Barden decision, and that after the report of the commissioners had been filed it would not be final, and the Department would have to go through the same *modus operandi* that they have for years to determine whether the lands were mineral or non-mineral.

The commissioners' report would be merely prima facie evidence of the mineral character of the lands, or of their non-mineral character, and a hearing would have to be had to determine what lands the railroads would be entitled to under their grants. After the rules and regulations were prepared and submitted to the Secretary, and after consultation with the assistant attorney-general and his assistants, I came to the conclusion that the bill was impracticable and that it would not lead to the results you expected, as I originally thought it would. According to the terms of the bill, when the lands had been classified as mineral and non-mineral they would be entitled to a hearing and a determination by the General Land Office as to their character, under the Barden decision. We went over this decision very carefully, and over the provisions of the bill, and came to the conclusion that if the bill became law this office would still have to go through the same proceedings as now before the lands could be patented to the railroad companies, as the Barden decision distinctly holds that there must be a finding by the Department as to the mineral or non-mineral character of the lands before patents can issue.

Now, under the bill all the information we would have would be merely that the commissioners had determined that certain lands should be classed as mineral or agricultural. This department, from such a report, could not patent the lands without a hearing and without putting into motion the usual methods for determining the mineral or non-mineral character of the lands. Under the rules and regulations now in force (adopted since the conversation with you and my report on the House bill) a determination can be had of all lands included in grants a great deal quicker, much more satisfactorily and at much less expense to the government.

For these reasons I made the report upon the Senate bill, and believe that it is for the interests of the government and the people of the west that a determination be had as soon as possible as to the mineral character of lands claimed by railroad companies under their grants and those they are entitled to have patented to them, and the mineral lands so declared, so the companies can take their indemnity in lieu thereof.

I submitted all these matters to the Secretary and had a conversation with him before the adoption of the rules and regulations, and I thought these rules and regulations

would meet with your approval, and that you would see that they would facilitate matters and close up those grants in the quickest way possible. I am very sorry they do not meet with your approbation, as I thought they were just what you wanted, and we would not need the aid of Congress to make laws and regulations for the adjustment of these grants.

I remain, with respect, your obedient servant,

S. W. LAMOREUX,
Commissioner.

HON. CHARLES S. HARTMAN,
House of Representatives.

The joint letter of Senator T. C. Power, Congressman Chas. S. Hartman and the undersigned, in our respective official capacities, to the Honorable the Secretary of the Interior, dated August 7th, 1894, entering our protest against these most absurd and inefficient rules and regulations of the Department of the Interior:

HOUSE OF REPRESENTATIVES U. S.
Washington, D. C., August 7, 1894.

DEAR SIR: For and on behalf of the people of Montana, whom we represent in the capacity of Mineral Land Commissioner of the state, U. S. Senator and representative in the lower House of Congress, respectively, we, the undersigned, respectively protest against the execution of the instructions contained in your letter of July 9, 1894, addressed to the honorable Commissioner of the General Land Office, relative to the duties of Registers and Receivers in the selection and examination of mineral lands. In addition to this protest against the execution of said rules, we respectively ask that the same may be revoked in so far as they apply to the State of Montana, for the following reasons:

(1) The provisions of the rules above referred to turn over to the Northern Pacific Railroad company the authority and right to examine, select, ascertain, classify and define the lands within the limits of its grant, and, in our judgment, it is better that the government should select its agents from a wholly disinterested and non-partisan source.

(2) Said rules, placing in the hands of the railroad company the right to represent the government and itself in the selection of such lands, practically make their selection and ascertainment a prima facie case, and throws the burden of proof upon anyone interested in obtaining title to mineral lands.

(3) As a portion of the second rule issued under date of July 9, 1894, after authorizing the land agent of the company to file with the local land officers an affidavit which shall be attached to the list of lands when returned, setting forth that he has caused the lands mentioned to be carefully examined *by the agent and employes of the company* as to their mineral or non-mineral character, etc., you then use this language:

"Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of 6 miles from any mineral entry, claim, or location, which list shall be transmitted to the Department for its approval. If any of the lands embraced in said list of selections are found upon examination to be within a radius of 6 miles from any mineral entry, claim, or location, you will cause a supplemental list of such lands to be prepared and return the same to the Register and Receiver of the district in which they are situated, and notify the railroad company that they have been so returned. The Register and Receiver will at once cause notice to be published in such newspapers as shall be designated by the Commissioner of the General Land Office, containing a statement that the railroad company has applied for a patent for the lands, designating the same by townships, and has filed lists of the same in the local land office; that said lists are open for inspection; that a copy of the same, by descriptive subdivisions, has been conspicuously posted in said land office for inspection by persons interested and the public generally; and that the local land officers will receive protests, or contests, within the next sixty days for any of said tracts or subdivisions of land claimed to be more valuable for mineral than for agricultural purposes.

"At the expiration of said sixty days the Register and Receiver will return to the Commissioner of the General Land Office said supplemental list, noting thereon any protests or contests or suggestions as to the mineral character of any of such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said list. After the same shall have been returned by the Register and Receiver you will first eliminate from said supplemental list all the lands that have been protested or contested or claimed to be more valuable for mineral than for agricultural purposes, or concerning which any suggestion has been made as to their mineral character. The remaining lands you will certify to this Department for approval and patenting as agricultural."

This portion of the rule, in effect, operates as a confiscation of the mineral lands of the United States to the use and benefit of the Northern Pacific Railroad company. You first say:

"Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of 6 miles from any mineral entry, claim, or location, which list shall be transmitted to the Department for its approval."

There is no word or suggestion in these rules that any other person but the "agents and employees of the company" shall make any personal examination of these lands. The only examination provided for on the part of anybody representing the Government is an examination of the list. The provision for the preparation of a clear list of all lands embraced therein not within a radius of 6 miles from any mineral entry; claim, or location, and for the certification by patent to the railroad company of all such lands as are not within the radius of 6 miles of any mineral entry, claim, or location, simply operates as a gift to the Northern Pacific Railroad Company of all the mines and mineral lands which may hereafter be discovered that are not now within a radius of 6 miles of some known mineral entry; claim or location.

Against this clause of the rule we desire to especially interpose our protest. The effect of the decision of the Supreme Court of the United States in the case of Barden vs: Northern Pacific Railroad Company will practically be nullified by the action of the Interior Department, in the issuance of these rules, if they are to be put in force.

To say that it is the policy of the U. S. Government to give the vast undeveloped, undiscovered mineral wealth lying within the grant to the Northern Pacific Railroad Company in the States of Montana and Idaho to any corporation, and to say that in the face of the decision of the Supreme Court of the United States that they are not entitled to any of these mineral lands, is but to say what this Department will do if it puts into practical operation and application the provisions and principles contained in this code of rules.

By the terms of your rules it will be observed that the very fact that the lands are without the "radius of 6 miles from any mineral entry, claim, or location," is the only prerequisite necessary to give the railroad company title to such lands and to authorize the Land Department to patent such lands to the company, the question of their mineral or non-mineral character not being considered. The injustice of the rule can be thoroughly appreciated when you come to consider that scarcely a year goes by but what new mining camps are discovered, new claims are staked out, and those claims and camps are in many instances far removed from any known mineral location, claim, or mine.

It is only fair to presume that the same rules will govern the mining industry in the future as has governed it in the past. It is only fair to presume that the future will each year add additional mining claims and additional mining camps to those already in existence, and in the vast area of the State of Montana, a State of 146,000 square miles, where the mining industry is now in its infancy, it is not too much to expect that there will be a large number of new mining camps and new mineral locations established and made at points in the State now entirely undeveloped, if not entirely unknown, but still within the limits of the Northern Pacific Railroad grant And all these you propose by the terms and effect of this rule to donate to the Northern Pacific Railroad Company.

(4) We object to that portion of your rules providing for the preparation of a supplemental list of lands, and all the proceedings which you propose under that rule, for this reason:

That the notice which you require the railroad company to have published in some newspaper does not contain a description of the land for which patents are applied for, but only refer to certain lists that are filed in the local land office, and "that said lists are open to the public for inspection, that a copy of the same by descriptive subdivisions, has been conspicuously posted in said land office for inspection by persons interested, and the public generally." What a farce it is to give notice to a miner, or to a number of citizens engaged in the mining business, who live in many instances 200 miles from the local land office, that an application has been filed for patenting certain lands by the railroad company, and that he can find a description of those lands by traveling from 100 to 200 miles to the local land office, and if he is sufficiently interested after he goes there and reads the notice, he can then file a protest against the issuance of patent.

The railroad company always has its agents and attorneys handy and convenient to the land office to carefully guard its interests. That is its right, interest, and duty, and we make no complaint of that. But the men engaged in the mining occupation in our State, that are scattered throughout the hills in remote camps, can not be expected to employ agents to examine these lists, which are prepared by the railroad agents, acting as the agents of the Government of the United States.

If the rules which you have promulgated are to remain in force, then in order to prevent the greater portion of the mineral lands contained within the limits of the grant of the Northern Pacific Railroad Company from becoming the property of that company in spite of the decision of the Supreme Court of the United States to the contrary, protracted and expensive litigation will be necessary.

If there were any doubt whatever as to the effect of this rule, that doubt is cleared away by the following language contained in the rule itself:

"At the expiration of said sixty days the register and receiver will return to the Commissioner of the General Land Office said supplemental list, noting thereon any protests or contests or suggestions as to the mineral character of any such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said lists. After the same shall have been returned by the register and receiver, you will first eliminate from said supplemental list all the lands that have been protested or contested or claimed to be more valuable for mineral than for agricultural purposes, or concerning which any suggestion has been made as to their mineral character. The remaining lands you will certify to this Department for approval and patenting as agricultural."

You give sixty days from the posting of the notice to the miners of our State to come in and see whether or not they are satisfied with what the agents of the Northern Pacific Railroad Company, who are designated by your rule as the agents of the Government, have done in the matter of the classification and segregation of mineral lands within the Northern Pacific grant. And in the event no one appears within that time you propose to have certified to the Department for approval and patenting all the lands which the agents of the railroad company, acting as the agents of the Interior Department, have seen fit to select for the company.

(5) Regarding that portion of the rule referring to lists already prepared in accordance with rules and regulations, where such rules have been complied with, that the lands affected should be excepted from the terms of the rule of July 9, we simply say this is in direct contravention of the decision of the Supreme Court declaring that the mineral lands are not included and were not intended to be included in the grant to the Northern Pacific Railroad Company, and in view of the fact that no lands have been patented to the railroad company within its grant in the state of Montana, we protest against the issuance of any patent or patents to said company for any lands within its grant in the state of Montana until the entire grant is examined and classified and the mineral lands segregated from the non mineral by a competent commission, to be appointed in the manner set forth in H. R. 3476, which passed the House of Representatives on the 24th of July, 1894.

(6) These rules, which were issued by your Department without any notice whatever to the mineral land commissioner of our state, or to either of our representatives in Congress, are so harsh and oppressive upon our citizens that we feel justified in asking the total abrogation of the same.

(7) We deny the right of the Secretary of the Interior to issue a code of rules which, in its effect, abrogates, sets aside and nullifies the law of the land.

(8) The bill to which we have above referred, providing for the classification and examination of mineral lands within the grant of the railroad company, was a bill which met with your unqualified approval in your letter of September 14, 1893, addressed to the Hon. James H. Berry, chairman committee on public lands, United States Senate, which can be found in H. R. Report 502, second session Fifty-third Congress.

The bill also received the indorsement of the Honorable Commissioner of the General Land Office in his letter of October 14, 1893, addressed to the Honorable Secretary of the Interior, and which also appears in the same report.

We had every reason to suppose and every reason to believe that with these letters in our possession, and as a portion of the public files, that your support, and the support of the honorable Commissioner of the General Land Office would be heartily accorded to us until the final passage of the bill in the senate. But to our great surprise, and, we may say, disappointment, we find your Department, on the 9th of July, issuing a code of rules, to which we have referred, and on the 30th of July, writing a letter to the Hon. Samuel Pasco, acting chairman of the committee on public lands, United States Senate, in opposition to Senate bill 434, which was an exact copy of the House bill to which we have above referred.

It is true, it may be said, that if we are right in denying the authority of the Interior Department to thus nullify the effect of the decision of the Supreme Court, we have our remedy by testing the question in the courts. We are aware of that right, but are not desirous of entailing the expense of a protracted litigation upon our people again. Having won the main fight in the Barden case it is with great regret that we find the Interior Department nullifying the effect of that decision by causing the agents of the railroad company to be made the agents of the government, and by placing in the hands of the railroad company the machinery whereby its agents shall make the examination and classification of these lands.

It seems to us that the reasons assigned by the Land Department n support of the bill for the examination and classification of mineral lands in the states of Montana and Idaho were good when they were first given by that Department, and that they are equally good now.

It seems to us that the appointment of the commissioners provided by that bill from the residents of the respective land districts, of men who have had practical experience in the mining and prospective business, is a much more accurate, just and satisfactory way of examining and classifying the mineral lands within the grant than the proposition contained in your code of rules, which constitute the agents and employes of the beneficiary under the grant the agents to perform that service.

Your action in thus designating the agents of the company to examine, classify and set apart the mineral lands from the agricultural lands, to the end that the lands found to be non-mineral shall be patented to the railroad company, would find a parallel if a court ordering partition of lands from several parcels between conflicting contestants for those lands should arbitrarily appoint one of the contestants to make examination and selection of the property in controversy. There is but little doubt what the result of such examination and selection would be. It is certain that the party making the selection would not get any the worst of the transaction, and I am of the opinion that the agents of the railroad company, acting under your authority, proceeding to examine, classify and select these lands, that they will see to it that the Northnrn Pacific Railroad Company will at least receive all it is entitled to.

We are anxious to receive a reply to this communication at as early a date as possible, that we may know whether it is to be the policy of your Department to continue this code of rules or not, that we may govern our future course accordingly.

We are yours, very truly,

GEO. W. IRVIN,
Mineral Land Commissioner, State of Montana.
THOMAS C. POWER,
U. S. Senator, State of Montana.
CHAS. S. HARTMAN,
Member of Congress, State of Montana.

THE SECRETARY OF THE INTERIOR,
Washington, D. C.

Senator Power obtained unanimous consent of the Senate therefor, and we were thereby enabled to have the Government Printing Office formulate this correspondence into a Senate Document (Misc. No. 258), of which we obtained, for our future use, 1,000 extra copies, one of which is filed with and made a part of this report.

It is apparent to me, and I think will be made so to the Senate of the United States, that a law to examine, classify and segregate the mineral lands *not granted* within the Northern Pacific Railway subsidy is now more necessary than ever.

When, after infinite labor and organization, the people have had their day in the highest Court of the land, and that Court has declared in unmistakeable language that they and the Government of the United States have as a right everything that was claimed, and in face of this declaration an executive department goes to work and formulates rules and regulations under this decision so directly contrary to its spirit as in effect to nullify it, it is then time to enact a measure so plain that nothing will be left for a complaisant ministerial officer to misconstrue or pervert.

The situation of the mineral land bill is interesting in that we have only from the first Monday in December of this year until the fourth day of March, 1895—or what is called the "short" session of Congress—in which to pass it through the Senate and obtain executive approval. Failing in this, the legislative work has to be all commenced anew, or we will be compelled to surrender to the construction by the Interior Department of the decision of the Supreme Court. I am prepared to push matters in the Senate and House, and have provided myself with letters addressed to the Senate Committee on the Public Lands containing reviews and criticisms on the action of the Interior Department;; and taken such other steps as I believe will aid us materially in accomplishing thn desired end.

I have prepared and desire passed, in substantially the same form, a memorial from our Legislature to the Senate of the United States, urging final passage of our bill; and I hope that this memorial will be speedily acted upon.

I am anxious that the vacancy should be promptly filled in the Senate from Montana, so that every effort may be made in this vital issue. I regard the success or failure of the mineral land bill as a critical epoch in the history of the State of Montana, and hope that no remissness on the part of any of us will allow such a catastrophe as failure would mean to befall our young commonwealth.

I will be at my post promptly, and at all times in attendance upon the parties in charge of the measure. I recognize that we have a hard fight before us; but we must succeed.

Very respectfully, etc.,

GEO. W. IRVIN,
Mineral Land Commissioner.